

Appl. No. 10/039,753
Amdt. dated: September 6, 2006
Response to Office Action of August 17, 2006

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REMARKS

Claims 1-10, 23, 25, 26, 28, 29, and 31-33 are pending in this application. Claims 1-10, 23, 25, 26, 28, 29, and 32 are rejected, and claims 31 and 33 are allowed. By the present amendment, claims 1, 3, 4, 5, 8, 9, 10, 23, and 26 are hereby amended, and claim 6 is hereby canceled without prejudice or disclaimer. Support for the amendment to claims 1 and 23 to make explicit what is implicit, i.e., that the control subjects have been "diagnosed as not having atherosclerotic vascular disease" is found in Figures 1 and 2 and on page 5, paragraph beginning with the word "Alternatively" of US Provisional Application No. 60/259,340 (the first-filed priority document for the instant application) and in Figure 9 and paragraph 10 of the instant application. New claims 34-39, which find support in previously presented claims 1 and 6, are hereby added. Paragraph 22 of the specification is also amended to correct obvious typographical errors. As the amendments and new claims are fully supported by the present application, the amendments and new claims add no new matter.

Applicant thanks the Examiner for the telephone conferences of August 30, 2006 when the §102(a)/103(a) rejection was discussed.

In view of the above-described amendments and following remarks, reconsideration of claims 1-10, 23, 25, 26, 28, 29, and 32, and consideration of new claims 34-39 are respectfully requested.

§ 112 Rejection

Claims 1-10, 23, 25, 26, 28, 29, and 32 are rejected under §112 first paragraph. As amended, the claims no longer recite a method which involves determining the level of MPO in lymphocytes or a sub-population of lymphocytes. In view of the amendment, Applicants submit that the rejection is overcome.

§102/103 Rejections

Claims 1, 3, 5-8, 10, 23, 26, and 29 are rejected under 35 USC §102(a) as anticipated by or alternatively under 35 U.S.C. 103(a) as being obvious over Zhang et al (JAMA, 286, 2136) (hereinafter Zhang et al). As stated in the Office Action,

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The reference has a 102(a) date because the instant claims are only accorded the benefit of the instant filing date of 1/2/02. The Examiner finds that the instant claims are broader than the invention supported by the last filed provisional application 60/283/432. (See page 3 of the Office Action.)

As amended, the claims of the present application no longer recite a control that is composed of the "general population" or a "select population" that is different from the controls described in the first priority document, i.e., US Provisional Application 60/259,340, which has a filing date of January 1, 2001. In addition, the claims of the present application have been amended to no longer recite "lymphocytes" or "sub-populations of lymphocytes." Support for "subpopulations" of neutrophils or monocytes is found on page 3, second full paragraph of the US Provisional Application 60/259,340, and in the 1st incomplete paragraph on page 9 of US Provisional Application 60/259,340. Support for determination of MPO activity or mass levels in more than one bodily sample (e.g. both neutrophils and monocytes) is found on page 3, second full paragraph of US Provisional Application 60/259,340 (i.e., the first priority document), and on page 5 in the paragraph beginning with the word "Alternatively" of US Provisional Application 60/259,340. In view of the amendments and the support that is found in US Provisional Application 60/259,340 for sub-populations of monocytes and neutrophils or both, applicants submit that the instant claims should be accorded benefit of the filing date January 2, 2001, and that the §102(a) and §103(a) rejections as being anticipated by or obvious in view of Zhang et al., which has a publication date of November 7, 2001 should be withdrawn.

In view of the above-described amendments and remarks, applicants submit that, in addition to allowed claims 31 and 33, claims 1, 7-10 23, 25, 26, 28, 29, 32 and new claims 34- and are now in conditions for allowance. Prompt notice of such allowance is respectfully requested. If the Examiner has any questions regarding the amendments or remarks, he is encouraged to call Pamela A. Docherty, at (216) 622-8416.

Respectfully submitted,

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